

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Joseph Sawtell

v.

Civil No. 06-cv-229-SM

Warden, New Hampshire State Prison

O R D E R

Having moved to lift the stay of federal proceedings, Joseph Sawtell now seeks review of his petition for a writ of habeas corpus and supporting documents, filed pursuant to 28 U.S.C. § 2254, in which he challenges the constitutionality of his state court conviction and confinement (document nos. 1, 6, 9-12 and 28). See Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rule") (requiring initial review to determine whether the petition is facially valid).

For the reasons stated in the report and recommendation issued simultaneously herewith, I recommend that Grounds One, Two and Three of the petition be dismissed for failure to state a claim upon which federal habeas corpus relief may be granted. As Ground Four of the petition states a cognizable claim for purposes of federal habeas review, I order it served on the

respondent.

Accordingly, I direct that Ground Four of the petition be served on the warden of the NHSP. See Habeas Rule 4. The respondent shall file an answer or other pleading in response to the allegations made therein. See id. (requiring reviewing judge to order a response to the petition). The Clerk's Office is directed to serve the New Hampshire Office of the Attorney General, as provided in the Agreement On Acceptance Of Service, copies of this order and the habeas petition and supporting documents (document nos. 1, 6, 9-12 and 28). Respondent shall answer or otherwise plead within thirty (30) days of the date of this order. The answer shall comply with the requirements of Habeas Rule 5 (setting forth contents of the answer).

Upon receipt of the response, the court will determine whether a hearing is warranted. See Habeas Rule 8 (providing circumstances under which a hearing is appropriate).

Petitioner is referred to Fed. R. Civ. P. 5, which requires that every pleading, written motion, notice, and similar paper, after the petition, shall be served on all parties. Such service

is to be made by mailing the material to the parties' attorneys.

SO ORDERED.



James R. Muirhead
United States Magistrate Judge

Date: April 7, 2009

cc: Thomas J. Gleason, Esq.
Scott F. Gleason, Esq.
Stephen D. Fuller, Esq.
Joseph Sawtell, Petitioner